

3. POLICIES, OBJECTIVES, AND REFERENCES

3.1 Policies

Chapter 2 of the NTIA Manual presents various policies applicable to radiocommunication services and their associated spectrum resources.

3.1.1 Obligation of Funds

The obligation of funds or grants for research, development, modification, enhancement, expansion, lease, or procurement of radiocommunication services in support of any DOE program will be withheld pending certification or authorization from NTIA that spectrum support is available. This restriction also applies to funds used to acquire land sites or facilities for such programs. It also applies to devices capable of interfering with or being disrupted by authorized radio services.

3.1.2 Land Mobile Radio Spectrum Efficiency

Effective January 1, 1995, NTIA requires the Government to:

- Use commercial services and non-government-allocated spectrum resources to the maximum extent feasible and practical.
- Share the same services throughout a site, Departmentwide, and Governmentwide to the maximum extent feasible and practical.
- Share the same services in support of public safety needs throughout Federal, State, and Local Governments to the maximum extent feasible and practical.
- Replace 25 kHz channelized, government-owned equipment with 12.5 kHz channelized equipment by January 1, 2005, in accordance with the new allotment plan for the 162-174 MHz band; and January 1, 2008, in accordance with the new allotment plan for the 406-420 MHz band.
- Meet the goal of making efficient and cost-effective use of spectrum resources or NTIA may withhold frequency authorizations for Government land mobile systems.

3.1.3 Spectrum Conservation

The electromagnetic spectrum is a limited natural resource which is accessible to all nations. The United States is vitally dependent upon the use of spectrum resources to carry out national policies and achieve national goals. Therefore, conservation of the electromagnetic spectrum resources is essential to the welfare of this Nation.

DOE spectrum management is an integral part of DOE responsibility for the conservation and efficient use of this natural resource. Effective and prudent use of the spectrum resources dictates that it be reserved for DOE uses which cannot be satisfied by other means and are in the best interest of the United States.

All elements of DOE must, therefore, decide in the light of policies, rules, regulations, frequency allocations, and availability of frequencies whether, what, and how much administrative and operational radiocommunication services are needed to carry out a mission. They must conduct the necessary feasibility and technical studies, perform essential cost analysis, select the best possible frequencies for their use, coordinate with other involved local agencies, and prepare and submit an appropriate request to the CIO.

Administrative and operational telecommunications as used in this guide are defined as follows.

- Administrative - incorporates the use of leased and Government-owned radio-communication services and networks that use the electromagnetic spectrum for the transmission and reception of information, such as outside transmission facilities supporting common user voice and/or data communications and normal day-to-day activities such as construction, maintenance, transportation, and paging.
- Operational - requires the use of leased and Government-owned radiocommunication services unique for the control of electric, gas, petroleum, water, and steam utilities in production or transport; petroleum reserves; defense scientific research and development nuclear programs; security; and public health and safety programs, such as the Nuclear Emergency Search Team (NEST) and the Radiological Assistance Program (RAP).

3.1.4 Reimbursement Costs for Spectrum Management Services

Public Law 104-134 was passed in 1996 requiring the Federal departments and agencies to reimburse NTIA for spectrum management services rendered. Congress approved a Fee Reimbursement Plan based on NTIA operating costs and the number of frequency authorizations requested by each of the Federal departments and agencies. NTIA will annually inform the Federal departments and agencies of their share of costs for the following fiscal year based on the number of frequency authorizations approved through June of the current fiscal year.

In addition, the CIO will add an overhead charge to cover contractor expenses prior to determining major Departmental elements' share. The CIO will update the reimbursement costs in the Budget Assumptions, and the Departmental elements will transfer their share of these funds to Headquarters. Therefore, spectrum conservation is very important to minimizing these reimbursement costs by ensuring maximum use of the minimal number of frequency authorizations.

3.1.5 Reimbursable Contracts

All Departmental field activities performing reimbursable work for other Governmental agencies will have as part of the contractual instrument assurance by the requiring agency that spectrum resources are available for the intended use. Frequency availability for Department of Defense (DOD) reimbursable research and development programs must be assured by the Frequency Panel (FP) of the Military Communications-Electronics Board. The DOD form (DD Form 1494) used for this purpose will be completed by the DOD element and submitted through appropriate DOD channels for processing to NTIA.

The Military Service IRAC representative will provide an information copy of DD Form 1494 to the DOE IRAC representative prior to its forwarding to NTIA. The DOE IRAC representative will support the Military Service application in the SPS. The Military Service IRAC representative will provide the DOE IRAC representative with the results of the FP review for each stage of the DOD frequency applicability certification process. The results of the FP review will be provided by the military services to the CIO for follow-up action.

All Departmental elements are to obtain approval of their local servicing DOE Frequency Management Office before completing negotiations for reimbursable contracts between Departmental contractors and other agencies. Assurance must be obtained from the CIO that frequencies are available for the intended use.

3.1.6 "Grandfather" Rights

The relative priority between two frequency authorizations which are substantially equal is determined by their authorization dates. The frequency authorization with the earlier date has "grandfather" rights over the frequency authorization with the later date of registration. This means that systems operating in accordance with the National Table of Frequency Allocations and appropriate Government standards under existing authority must be given protection from interference by later installations with equal allocation status.

In those instances where interference is possible, concurrence must be obtained from all existing licensees with the licensees' full knowledge of the potential interference before proceeding with system design, procurement, or operation.

3.1.7 Prohibited Use of Frequencies

The Communications Act of 1934, as amended, prohibits operation of radio stations unless specifically authorized by the President or by the FCC. The inclusion herein of discrete frequencies is not an authority to operate a radio station or conduct an operation entailing the use of spectrum resources. Under certain conditions, existing DOE group assignment authority may be used on a temporary basis provided notification and approval from the CIO has been received.

Exceptions involving emergencies, disasters, safety of life and property, and war emergencies permit discretionary use and are discussed in Section 7.3 of the NTIA Manual. The use of

unauthorized spectrum resources will be discontinued as the situation permits. The CIO will be advised without delay by priority message of the nature of the emergency, the frequencies involved, and the expected duration of the operation.

3.1.8 Freedom of Information Act (FOIA) *(Revised 04/2000)*

In general, the Act (see 10 CFR Ch. X (1-1-98 Edition) Part 1004-Freedom of Information (DOE)) allows free access by the public to all Departmental records not covered by specific exemptions. NTIA and DOE are obligated to make public any information pertaining to unclassified frequency authorizations. Per DOE Order 471.1, IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI), dated September 25, 1995 (<http://www.explorer.doe.gov:1776/htmls/regs/doe/newserieslist.html>), any portion or matter of a request that contains UCNI shall be considered sensitive information and shall be denied. DOE discourages classifying radio frequencies. NTIA classified the Government Master File (GMF) CONFIDENTIAL. NTIA will provide unclassified extracts from the GMF if the record is not exempt from FOIA. If a field entity wants to exempt a frequency record from FOIA, the entity should make the appropriate notification on their frequency application request.

DOE Order 471.2A, INFORMATION SECURITY PROGRAM, dated March 27, 1997 (<http://www.explorer.doe.gov:1776/htmls/regs/doe/newserieslist.html>), directs all owners of data with the responsibility for determining the sensitivity of information before it is used or stored in information systems. Therefore, consistent with DOE O 471.2A, all organizational elements (including Program Offices, Operations Offices, Power Administrations, field sites, national laboratories, and other DOE management and operating facilities) shall diligently review their radio frequency authorization (RFA) records to determine if FOIA exemption is needed to insure proper protection of sensitive, unclassified DOE spectrum-dependent systems. Further, determination for FOIA exemption shall be a routine part of the submitter's RFA application process, and all FOIA Exempt determinations shall be coordinated with the local FOIA Officer.

Sensitivity determination for the information contained in all RFA requests shall be the submitter's responsibility. This determination shall be certified by a DOE official from the submitting organization before the RFA request will be transmitted by the Office of the Chief Information Officer to NTIA for coordination and approval. Since cases requiring FOIA exemption for an RFA must be approved by a FOIA Officer, any information of record documenting the decision process for FOIA Exempt determination shall be included by the submitter with the RFA application.

Joint Chief Information Officer and Office of Security Affairs Director Memorandum for All Departmental Elements, Subject: Freedom of Information Act Exemption Determination and Protection of Sensitive Information for Radio Frequency Authorizations, dated April 12, 1999 (see Appendix E), advises all DOE organizational elements of the public release of potentially sensitive DOE RFA records under a FOIA request, and directs DOE to insure that the proper measures (as described below) are taken for the protection of sensitive RFA information from unwanted release in the future.

The instructions for marking the FOIA Exempt field in an RFA request are described in the NTIA *Manual of Regulations and Procedures for Federal Radio Frequency Management* (refer to Chapter 9, Section 9.8.2, item 41), as authorized by Title 47 United States Code (U.S.C.) 901. As explained in the NTIA Manual, this field is to be marked with an “X” when it is determined by the submitter’s FOIA Officer that the information contained in the RFA is to be exempt from release in accordance with the provisions of the FOIA, Title 5 U.S.C. 552, as amended. The NTIA Manual also provides the policies and general guidance regarding public access to the Federal spectrum management process, including nonclassified Federal radio frequency information and access to electronic databases (refer to Chapter 11). The NTIA Manual can be viewed on NTIA’s Web site, located at: <http://www.ntia.doc.gov/osmhome/redbook/redbook.html>.

3.1.9 Commercial Facilities

Public Law 104-104 was passed in 1996 requiring, to the extent permitted by law and where practicable, the Federal Government to facilitate access to Federal property for the siting of commercial mobile service facilities. This action presents an opportunity for the rapid construction of the National Wireless Communications Infrastructure with access to the National Information Infrastructure. Agencies shall charge annual fees based on fair market value for the siting of commercial mobile service facilities on Federal property, and may use competitive procedures if not all applicants can be accommodated. Additional information should be available through the site facilities manager.

3.1.10 Interception of Radiocommunication Services

The interception of communications is forbidden by Section 705 of the Communications Act of 1934, as amended, and Chapter 119 of Title 18, U.S. Code (Crimes and Criminal Procedures). The law makes exceptions which include those whose duties involve processing of communications traffic, law enforcement officials, and the interception of transmissions when engaged in routine operations. Divulging information obtained through any of the above, except under exceptional circumstances, is illegal and punishable by fine, imprisonment, or both.

Within DOE, the monitoring of radiocommunication services or the use of these services except for the stated purpose contained in the frequency authorizations is forbidden. The prohibition does not include monitoring of DOE stations for administrative purposes, which includes but is not limited to circuit discipline, traffic analysis, frequency stability of equipment, communications security, or establishing the identity of a station causing harmful interference to authorized DOE communications.

Should a requirement arise for the monitoring of radiocommunication services for other than administrative purposes, the requirement with justification will be referred to the CIO before any overt monitoring is undertaken. Upon receipt of such a requirement, the CIO will obtain appropriate Department coordination and legal counsel prior to authorizing any actions. The authorization action will be forwarded to the originator that requested the action.

3.2 Objectives

The objectives for the use of radiocommunication services and associated spectrum resources are:

- Provide radiocommunication services that improve user productivity, enhance information exchange, and are more cost-effective than existing services.
- Provide radiocommunication services that allow the transmission of voice, data, messaging, imaging, and video information as required with anyone, anytime, and anywhere.
- Transition existing telecommunication services to new wireless telecommunication services such as personal communication services, wireless private branch exchanges and wireless local area networks, and mobile satellite services to the maximum extent feasible and practical.
- Ensure that funds are not obligated for the acquisition of radiocommunication services until NTIA certifies and/or authorizes the use of spectrum resources.
- Promote the competitive acquisition of radiocommunication services and systems that will satisfy present and future Departmental needs; complement DOE's national security and emergency preparedness planning; and provide the required degree of capacity, interoperability, compatibility, security, and reliability.
- Ensure that the database for the use of radiocommunication services and spectrum resources is current, accurate, and complete. Maintain a database that includes the use of all licensed as well as non-licensed radiocommunication services and their associated spectrum resources so that incompatible operations can be avoided.

3.3 References

Public Law 73-416, the Communications Act of 1934, as amended, provides for the regulation of interstate and foreign communication by wire or radio and for other purposes; and, in particular, section 305(a), which establishes Presidential statutory authority to authorize operations of radio stations belonging to, or operated by, the Federal Government; and section 706, which establishes the war emergency telecommunication powers of the President.

Public Law 102-538, National Telecommunications and Information Administration, Telecommunications Authorization Act of 1992, in part, mandates that the Federal Government acquire spectrum-efficient and cost-effective mobile radio services. In order to further the goal of making efficient and cost-effective use of the spectrum resources, the Act grants authority to the Secretary of Commerce to withhold or refuse to assign frequencies for radio services. NTIA Report 93-300, Land Mobile Spectrum Efficiency, presents the plan for Federal Government agencies to use more spectrum-efficient technologies.

Public Law 103-66, Omnibus Budget Reconciliation Act of 1993, required the Federal Government to transfer in excess of 200 MHz of its spectrum resources to the private sector for their use (235 MHz was transferred). NTIA Special Publication 95-32 presents the frequency bands, reallocation status, and reallocation schedule for the transfer.

Public Law 104-104, the Telecommunications Act of 1996, promotes competition and reduces regulation in order to secure lower prices and higher quality services for American telecommunication consumers and encourages the rapid deployment of new telecommunication technologies. This Act also requires the Federal Government agencies to allow commercial wireless telecommunication facilities to be installed on Federal buildings and property for a fair and reasonable fee.

Public Law 104-106, the Information Technology Management Reform Act (ITMRA) of 1996, which formally establishes the position of an agency Chief Information Officer (CIO) and states that the role of the CIO is to provide "advice and other assistance to the head of the agency and other senior management personnel to ensure that information technology is acquired and information resources are managed in a manner that implements the policies and procedures of the Paperwork Reduction Reauthorization Act of 1995 and the ITMRA of 1996, and the priorities established by the head of the agency."

Public Law 104-134, NTIA Reimbursement Fee Plan for Services Rendered, of 1996, requires the Federal Government agencies to reimburse NTIA for spectrum management services rendered such as frequency authorizations.

Public law 105-33, Balanced Budget Act of 1997, required the Federal Government to transfer 20 MHz of its spectrum resources to the private sector for their use.

Executive Order 12046, Relating to the Transfer of Telecommunications Functions, of 3-27-78, delegates the Presidential responsibilities for management of the electromagnetic spectrum to the Secretary of Commerce, which were redelegated to the National Telecommunications and Information Administration, and provides for the continuation of the Interdepartment Radio Advisory Committee to assist the Secretary in the exercising of the delegated Presidential authority.

Executive Order 12472, Assignment of National Security and Emergency Preparedness Telecommunications Functions, 4-3-84, with implementing regulations.

Executive Order 12656, Assignment of Emergency Preparedness Responsibilities, 11-18-88.

Executive Order 13011, Federal Information Technology, 7-16-96, presents policies and responsibilities regarding Federal information technology.

OMB Circular A-11, Preparation and Submission of Budget Estimates, issued annually, which provides guidance regarding the preparation and submission of budget estimates, including that portion which prohibits the obligation of Government funds without a certification of availability of spectrum support.

OMB A-76 (revised), Performance of Commercial Activities, of 8-4-83, which establishes policies for acquiring commercial or industrial products and services needed by the Government.

Federal Standard 1037B, Glossary of Telecommunications Terms, which provides definitions of terms used in telecommunications and directly related fields, and is published by the GSA.

GSA FSC 58, Federal Supply Schedule Cumulative Part VII.

ANSI C95.1-1982, Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz.

NTIA Manual, Regulations and Procedures for Federal Radio Frequency Management. 47CFR Part 300 states therein that the Federal Government departments and agencies shall comply with the requirements set forth in the NTIA Manual, which is incorporated by reference.

NCS Manual 3-3-1 (NCS 3142/2), SHARES HF Radio program User Manual, 7-28-94.

NTIA ERP, SECRET, Emergency Readiness Plan for Use of the Radio Spectrum (ERP) (U), October 1985.

DOE Order 200.1, Information Management Program, of 9-30-96, which provides a framework for the shift from information management as a stand-alone activity with little connection to the rest of the Department's activities to information as a corporate asset integrated with programmatic planning. It supports the Department's order reduction and contract reform initiative and the recommendations of the Galvin and Yergin panels. Finally, it sets a foundation for a more cost effective, business like approach to information management.

DOE Order 471.1, Identification and Protection of Unclassified Controlled Nuclear Information (UCNI), of 9-25-95.

DOE Order 471.2A, Information Security Program, of 3-27-97.

DOE Order 430.1-1, Life Cycle Asset Management, of 10-14-98.

DOE Order 5480.4, Environmental Protection, Safety, and Health Protection Standards, of 5-15-84 (Change 4 of 1-7-93).

DOE Order 5632.1C, Protection and Control of Safeguards and Security Interests, of 7-15-94.

DOE Order 6430.1A, General Design Criteria Manual, of 4-6-89.

DOE Manual 200.1-1, Telecommunications Security Manual, of 3-1-97.

DOE Manual 5300.3D, Telecommunications: Communications Security, of 8-3-93.

DOE Guide 5300.1C, Telecommunications, of 6-12-92.

DOE Notice 205.1, Unclassified Computer Security Program, of 7-26-99.

DOE/PO-0053, Strategic Plan, September 1997.

DOE/HR-0179, Information Management Strategic Plan, September 1997.

DOE/HR, Information Architecture/Volumes I, II, and III.

DOE NS/EP, National Security and Emergency Preparedness Telecommunications Services
Procedural Guide with the National Communications System (NCS) National Procedures Manual,
7-31-90.